

In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal No. 65/2015
Halima Khatoon & ors
Vrs.
Nagma Khatoon
ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Siwan Sadar in BLDR case NO. 111/285/2013-14 on 28.01.2015.

The brief facts of the case are that the present respondent Nagma Khatoon W/o Rais Mia R/o Vill- Hussainganj, Dist-Siwan filed a case before DCLR, Siwan Sadar in which present appellants were made as o.ps. In the said case, the relief sought by the petitioner was that the land measuring 5 dhur of khata No. 619, plot No. 225 situated in Mouza Kharaunti has been illegally encroached by the present appellants (o.ps before DCLR) as such the said encroachment be removed and her possession be recovered. Thereafter, the learned DCLR after hearing the parties finally vide order dt. 28.01.2015 allowed the said case and also ordered for removal of encroachment after measurement. Feeling aggrieved by the said order, the present appellants have preferred the instant appeal before this Court.

Heard the learned counsel for the appellant only as the learned counsel for the respondent remained absent despite being given last chance on 07.09.2017 vide order dt. 10.08.2017. As such this appeal petition is being disposed of by Ex-parte order.

The learned counsel appearing behalf of the appellant while assailing the impugned order submitted that the said order is illegal and without jurisdiction. He further submitted in detail as to how the appellants came to acquire the said land through oral hibba and having their possession also over the disputed land. He also argued that the learned DCLR without considering the facts and circumstances of the case properly went on to pass order for removal of encroachment. He lastly submitted that as the impugned order is arbitrary and without jurisdiction the same is fit to be set aside.

Considering the facts and circumstances of the case, material available on records, pleadings made by the learned counsel for the appellant and on perusal of the impugned order, it is quite obvious that the dispute relates to private land. Both parties lay their claim over the disputed land on one or another basis. None of the parties qualify to be considered as allottee or settlee as defined in the BLDR Act. It is an admitted fact by the parties that the present respondent approached the learned DCLR for removal of alleged encroachment and recovery of possession. Although the learned DCLR has not passed any order regarding recovery of possession but he ordered for the removal of encroachment. In fact removal of encroachment from private land is not permissible order the BLDR Act.

It is well established that the subject matter of adjudication under the BLDR Act. does not include such matters. The Hon'ble High Court in its judgment in CWJC No. 1091/2013 (Maheshwar Mandal & ors The State of Bihar & ors) on

24.06.2014 has observed that the revenue authorities are not empowered to entertain matter not arising out of the six enactments mentioned in schedule-1 of the BLDR act-2009. Obviously the instant matter does not fall under any of the said six enactments and as such it was not maintainable before the lower Court.

Thus, for the aforesaid reasons and keeping in view the observations made by the division bench of the Hon'ble High Court as quoted above, the impugned order of DCLR is set aside and the appeal is accordingly disposed of.

Dictated and Corrected by me


21/09/2017
Commissioner
Saran Division, Chapra.


21/09/2017
Commissioner
Saran Division, Chapra.